

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT & CRIMINAL JUSTICE
STANDING COMMITTEE MEETING
TUESDAY, JANUARY 30, 2007, 3:00 P.M.
ROOM W130, WEST OFFICE BUILDING, STATE CAPITOL COMPLEX**

Members Present: Sen. Gregory S. Bell, Chair
 Sen. Jon J. Greiner
 Sen. Lyle W. Hillyard
 Sen. Mark B. Madsen
 Sen. Scott D. McCoy
 Sen. Ross I. Romero

Members Excused: Pres. John L. Valentine

Staff Present: Jerry Howe, Policy Analyst
 Bonnie Brinton, Committee Secretary

Public Speakers Present: Kirk Cullimore, Attorney
 Ken Bresin, Deputy Director, Utah Legal Services
 Mark Johnson, Ogden City
 Tara Rollins, Utah Housing Coalition
 Creighton Horton, Assistant Attorney General
 Bob Wilde, Attorney
 Jane Marquardt, Attorney, Equality Utah
 Ron Gordon, Director, Office of Crime Victim Reparations
 Records

A list of visitors and a copy of handouts are filed with the Committee minutes.

Chair Bell called the meeting to order at 3:10 p.m.

Approval of Minutes

MOTION: Sen. McCoy moved to approve the minutes of January 26, 2007.

The motion passed unanimously with Sens. Hillyard and Madsen absent for the vote.

1. S.B. 136 Unlawful Detainer Amendments (Sen. M. Waddoups)

Sen. Waddoups proposed the following amendment:

1. Page 4, Lines 108 through 111:

108 [The] Any officer of the court shall indorse on the summons the number of days within
which
109 the defendant is required to appear and defend the action, which shall [not] be [less than]
three
110 [~~or more than 20~~] { calendar } days from the date of service { unless the court
determines that the
111 facts of the case should allow more time } . The court may authorize service by
publication or

2. *Page 5, Lines 134 through 143:*

134 (b) (i) The defendant may remain in possession if he executes and files a counter
bond in
135 the form of a corporate bond, a cash bond, certified funds, or a property bond executed by
two
136 persons who own real property in the state and who are not parties to the action.
(ii) The form of
137 the bond is at the defendant's option.
(iii) The bond shall be payable to the clerk of the court.
(iv) The
138 defendant shall file the bond prior to the later of the expiration of three business days from
the
139 date he is served with notice of the filing of plaintiff's possession bond or within 24 hours
after
140 the court sets the bond amount. =
(v) Notwithstanding Subsection (2)(b)(iv), the court may allow a period of up to
72 hours for the posting of the counterbond.
(vi) The court shall approve the bond in an amount that is the
141 probable amount of costs of suit, including attorney fees and actual damages that may
result to
142 the plaintiff if the defendant has improperly withheld possession.
(vii) The court shall consider
143 prepaid rent to the owner as a portion of the defendant's total bond.

3. *Page 6, Lines 167 through 168:*

167 (b) the court shall begin the trial within 60 days after the day on which the complaint

is

168 filed, unless the parties agree otherwise.

(c) If this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

4. Page 6, Line 178 through Page 7, Line 192
an action for unlawful detainer in which the claim is for nuisance and alleges

179 ~~{criminal activity}~~ **an act that would be considered criminal under the laws of this state**, the court shall hold an evidentiary hearing within ten days after the day on

180 which the complaint is filed to determine whether the alleged
181 ~~{criminal activity}~~ **act** occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is
182 filed and shall be served upon the defendant with the
summons at least three calendar days

183 before the scheduled time of the hearing.

184

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a),
185 determines that it is more likely than not that the alleged
186 ~~{criminal}~~ act occurred, the court shall

187 issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable
188 or the sheriff of the county where the property is situated shall
return possession of the property

189 to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

190

~~(e)~~ **(f)** At the evidentiary hearing held in accordance with Subsection (3)(a),
if the court

191 determines that all issues between the parties can be
adjudicated without further proceedings,

192 the court shall adjudicate those issues and enter judgment on
the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

- (i) an act that would be considered a felony under the laws of this state;
- (ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;
- (iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;
- (iv) a drug- or gang-related act that would be considered criminal;
- (v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and
- (vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

Kirk Cullimore, Attorney, assisted in the explanation of the amendment.

MOTION: Sen. Romero moved to adopt the amendment.

The motion passed unanimously.

Ken Bresin, Deputy Director, Utah Legal Services, spoke against the amendment.

Mark Johnson, Ogden City, spoke in favor of the bill.

Tara Rollins, Utah Housing Coalition, spoke to the bill.

MOTION: Sen. Greiner moved to pass S.B. 136, as amended, out of Committee with a favorable recommendation.

The motion passed with Sen. McCoy voting against the motion and Sen. Hillyard absent for the vote.

2. S.B. 164 Statute of Limitations for Bodily Injury (Sen. G. Bell)

This bill was held at the request of the sponsor.

3. S.B. 173 Criminal Intent Amendments (Sen. S. McCoy)

Sen. McCoy distributed a handout and explained the bill.

Creighton Horton, Attorney General's Office, assisted in the explanation of the bill.

MOTION: Sen. Romero moved to pass S.B. 173 out of Committee with a favorable

recommendation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

4. S.B. 154 Statement Under Penalty of Perjury (Sen. S. McCoy)

Sen. McCoy proposed the following amendments:

1. *Page 1, Line 26 through Page 2, Line 38:*

- 26 (1) If the {~~law requires or permits an affidavit,~~} Utah Rules of Criminal
 Procedure, Civil Procedure, or Evidence, require or permit a written declaration
 upon oath, an individual may, with like force and effect,
27 provide an unsworn written {~~document~~} declaration , subscribed and
 dated under penalty {~~of perjury and dated~~} of this section , in
28 substantially the following form:
29 {~~(1) if executed outside the state:~~}
30 "I declare (or certify, verify, or state) under {~~penalty of perjury under the~~
 laws} criminal penalty of the
31 State of Utah that the foregoing is true and correct.
32 Executed on (date).
33 (Signature)" {~~:-~~} .
34 {~~(2) if executed within the state:~~}
35 ~~—"I declare (or certify, verify, or state) under penalty of perjury that the foregoing~~
 is true
36 ~~and correct.~~
37 ~~—Executed on (date):~~
38 ~~—(Signature)".~~}
 (2) A person is guilty of a class B misdemeanor if the person knowingly makes a
 false written statement in lieu of an affidavit as provided under Subsection 1.

MOTION: Sen. McCoy moved to adopt the amendments to S.B. 154.

The motion passed unanimously with Sen. Hillyard absent for the vote.

Bob Wilde, Attorney, spoke in favor of the bill.

MOTION: Sen. McCoy moved to pass S.B. 154, as amended, out of Committee with a favorable recommendation.

The motion passed unanimously with Sen. Hillyard absent for the vote.

5. S.B. 58 Wrongful Death Amendments (Sen. S. McCoy)

Sen. McCoy explained the bill.

Jane Marquardt, Attorney, assisted in the explanation of the bill.

MOTION: Sen. Romero moved to pass S.B. 58 out of Committee with a favorable recommendation.

SUBSTITUTE MOTION: Sen. McCoy moved to hold S.B. 58.

The substitute motion passed unanimously.

6. S.B. 72 Crime Victim Reparations Records (Sen. G. Bell)

Sen. Bell explained the bill.

Ron Gordon, Director, Office of Crime Victim Reparations Records, assisted in the explanation of the bill.

MOTION: Sen. Hillyard moved to pass S.B. 72 out of Committee with a favorable recommendation.

The motion passed unanimously with Sen. Madsen absent for the vote.

MOTION: Sen. McCoy moved to adjourn the meeting.

The meeting adjourned at 4:45 p.m.

Sen. Gregory S. Bell, Committee Chair

Minutes of the Senate Revenue and Tax Standing Committee Meeting
January 30, 2007
Page 7